IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6358 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOTISINH BAHADURSINH THAKORE SINCE DECEASED THROUGH HEIRS
Versus
STATE OF GUJARAT

Appearance:
MR KG PANDIT for Petitioners
Mr.K.G. Sheth, AGP, for Respondent No. 1
RULE SERVED for Respondent No. 2
MR PK JANI for Respondent No. 6

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. Petitioners, who are heirs of deceased Motisinh Bahadursinh Thakore, by filing this petition under Article 226, read with Articles 14 and 19, of the Constitution of India, have challenged action of the respondents in taking possession his land bearing Survey No.509-paiki, admeasuring 2 acres 10 gunthas, situated at village Dethli, Taluka Sidhpur, District Mehsana, for the purpose of widening of Sidhpur-Thakrasan Road. The petitioner has further prayed to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ directing the respondents to hand over possession of the land in dispute, after constructing hedge and super-structure, which was demolished by the respondents.

2. Petitioners Nos.1/1 to 1/4 are legal heirs of deceased Motisinh Bahadursinh Thakore, who owned agricultural land bearing Survey No.509, situated at village Dethli. As per the averment made in the petition, deceased Motisinh received information from his relatives of village Dethli that on or about August 23, 1991, government officers were taking possession of part of petitioner's land bearing Survey No.509 for the purpose of widening of Sidhpur-Thakrasan Road. On receiving information, deceased petitioner went to village Dethli where he found that officers of the respondents had broken hedge of agricultural lands bearing Survey No.509 and had entered illegally in the land. The deceased petitioner approached the Mamlatdar where he was given to understand that the land in question was unlawfully acquired by the Panchayat for widening of the road. The Mamlatdar showed his helplessness that he cannot do anything in the matter. Thereafter, the deceased petitioner had sent a registered notice on August 25, 1991 addressed to Sarpanch of Thakrasan Gram Panchayat complaining about illegal acts done by the officers of the respondents. It is averred in the petition that no proceedings under the Land Acquisition Act, 1894, ('Act' for short), were followed as prescribed under the relevant provisions of the Act, and the action on the part of the officers of the respondents was illegal. It is also averred in the petition that no notices were served on deceased Motisinh and the petitioners were not afforded opportunity to raise their objection under Section 5A of the Act. Therefore, the petitioners have prayed for the reliefs as mentioned above.

3. When the petition was placed for admission hearing on February 20, 1992, the Court had passed the

following order:-
"Rule.
In spite of repeated adjournments being given, no affidavit-in-reply is filed. It is the contention of the petitioner that without following any procedure under the Land Acquisition Act the respondents are trying to deprive the petitioner of his land bearing Survey No.509 Paiki admeasuring 2 acres 10 gunthas of village Dethli, Taluka Sidhpur. Mr. Sompura, learned A.G.P., states that the petitioner's land is not under acquisition and the Land Acquisition Officer would not take possession of the land without following the procedure of law.
Hence, till further orders, respondents Nos.4 to 6 are restrained from entering into the petitioner's land bearing Survey No.509 paiki admeasuring 2 acres 10 gunthas for the purpose of constructing or widening the road known as Thakrasan-Sidhpur Road. It would be open to the respondents to take proceedings under Land Acquisition Act."

4. The respondents are duly served, but they have not filed any affidavit in reply controverting averments made in the petition.

5. The respondents have not placed notification issued under Section 4(1) or 6 of the Act on record of this petition. We are satisfied that the respondents, without following due procedure under the provisions of the Act, had illegally trespassed into the land of the petitioners and broken hedge and super-structure.

6. Learned counsel for the petitioners has made statement that, pursuant to the interim order dated February 20, 1992 passed by the Division Bench of this Court, the respondent have not taken possession of the land in dispute and the possession vests with the petitioners. Therefore, no question arises of handing over possession of the lands in dispute back to the petitioners.

7. The petitioners have prayed that the respondents be directed to pay compensation of Rs.50,000/- for their illegal, unauthorised and capricious action of taking possession of land in dispute. In absence of any evidence, no relief as prayed for by the petitioners for compensation can be granted. However, we make it clear that it will be open for the petitioners to file appropriate proceedings claiming damage for illegal use and occupation of the land of the petitioners by the respondents.

8. As a result of foregoing discussion, this petition is allowed. The action of the respondents in taking possession of land bearing Survey No.509-paiki, admeasuring 2 acres 10 gunthas, situated at village Dethli, Taluka Sidhpur, District Mehsana, of the petitioners, is declared to be illegal, ultra vires and de hors the provisions of the Land Acquisition Act, 1894. Rule is made absolute to the extent indicated above. The petition was required to be filed by the deceased petitioner because of illegal action of respondent No.6-Gram Panchayat. Therefore, we direct that respondent No.6 shall pay the costs of the petition, which is quantified at Rs.2500/- (Rupees two thousand five hundred only), to the petitioners within eight weeks from today.

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(swamy)